

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

E.K. and A.O., IN THEIR CAPACITY AS  
PARENTS AND GUARDIANS OF MINOR  
STUDENTS D.O. AND J.O.,

Plaintiffs,

v.

NOOKSACK VALLEY SCHOOL DISTRICT,

Defendant.

CASE NO. C20-1594-JCC

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential

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1 treatment under the applicable legal principles, and it does not presumptively entitle parties to  
2 file confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible things  
5 produced or otherwise exchanged:

6 (a) All medical and mental health records of the Plaintiffs that would  
7 otherwise be confidential under the Health Insurance Portability and Accountability Act of  
8 1996(HIPAA), including medical and mental health records generated through the course of this  
9 litigation;

10 (b) All educational records of D.O. and J.O. that would otherwise be  
11 confidential under the Family Education Records Privacy Act, Family Education Records  
12 Privacy Act (FERPA);

13 (c) All records from the Department of Children Youth and Families and/or  
14 law enforcement related to any complaints regarding the Plaintiffs;

15 (d) All records that include the social security numbers of the Plaintiffs;

16 (e) All records that contain private financial information of the Plaintiffs,  
17 including bank account information; and

18 (f) Any records or communication maintained by the Defendant about the  
19 Plaintiffs that contain information about other Nooksack Valley School District Students that  
20 would not be subject to disclosure to third parties under either FERPA or the Washington Public  
21 Records Act, Chapter 42.56 of the Revised Code of Washington; and

22 (g) Any portions of personnel files (as that term is used in Revised Code of  
23 Washington Sections 49.12.240 through 49.12.260) of current or former District staff that would  
24

not be subject to disclosure to third parties under the Washington Public Records Act, Chapter 42.56 of the Revised Code of Washington.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties

1 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
2 designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary for  
4 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
5 A);

6 (d) the court, court personnel, and court reporters and their staff;

7 (e) copy or imaging services retained by counsel to assist in the duplication  
8 of confidential material, provided that counsel for the party retaining the copy or imaging service  
9 instructs the service not to disclose any confidential material to third parties and to immediately  
10 return all originals and copies of any confidential material;

11 (f) during their depositions, witnesses in the action to whom disclosure is  
12 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
13 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
14 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
15 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
16 under this agreement;

17 (g) the author or recipient of a document containing the information or a  
18 custodian or other person who otherwise possessed or knew the information.

19 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
20 referencing such material in court filings, the filing party shall confer with the designating party,  
21 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
22 remove the confidential designation, whether the document can be redacted, or whether a motion  
23 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
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1 designating party must identify the basis for sealing the specific confidential information at issue,  
2 and the filing party shall include this basis in its motion to seal, along with any objection to  
3 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be  
4 followed and the standards that will be applied when a party seeks permission from the court to  
5 file material under seal. A party who seeks to maintain the confidentiality of its information must  
6 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion  
7 to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in  
8 accordance with the strong presumption of public access to the Court's files.

9 **5. DESIGNATING PROTECTED MATERIAL**

10 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each party  
11 or non-party that designates information or items for protection under this agreement must take  
12 care to limit any such designation to specific material that qualifies under the appropriate  
13 standards. The designating party must designate for protection only those parts of material,  
14 documents, items, or oral or written communications that qualify, so that other portions of the  
15 material, documents, items, or communications for which protection is not warranted are not  
16 swept unjustifiably within the ambit of this agreement.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
18 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
19 unnecessarily encumber or delay the case development process or to impose unnecessary  
20 expenses and burdens on other parties) expose the designating party to sanctions.

21 If it comes to a designating party's attention that information or items that it designated  
22 for protection do not qualify for protection, the designating party must promptly notify all other  
23 parties that it is withdrawing the mistaken designation.

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1           5.2    Manner and Timing of Designations. Except as otherwise provided in this  
 2 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
 3 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
 4 be clearly so designated before or when the material is disclosed or produced.

5                   (a)    Information in documentary form: (*e.g.*, paper or electronic documents  
 6 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
 7 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that  
 8 contains confidential material. If only a portion or portions of the material on a page qualifies for  
 9 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making  
 10 appropriate markings in the margins).

11                   (b)    Testimony given in deposition or in other pretrial proceedings: the parties  
 12 and any participating non-parties must identify on the record, during the deposition or other  
 13 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other  
 14 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
 15 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
 16 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
 17 confidential information at trial, the issue should be addressed during the pre-trial conference.

18                   (c)    Other tangible items: the producing party must affix in a prominent place  
 19 on the exterior of the container or containers in which the information or item is stored the word  
 20 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
 21 the producing party, to the extent practicable, shall identify the protected portion(s).

22           5.3    Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 23 designate qualified information or items does not, standing alone, waive the designating party’s  
 24

1 right to secure protection under this agreement for such material. Upon timely correction of a  
2 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
3 in accordance with the provisions of this agreement.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
6 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
8 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
10 original designation is disclosed.

11 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
12 regarding confidential designations without court involvement. Any motion regarding  
13 confidential designations or for a protective order must include a certification, in the motion or  
14 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
15 conference with other affected parties in an effort to resolve the dispute without court action. The  
16 certification must list the date, manner, and participants to the conference. A good faith effort to  
17 confer requires a face-to-face meeting or a telephone conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
19 intervention, the designating party may file and serve a motion to retain confidentiality under  
20 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
21 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
22 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
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1 other parties) may expose the challenging party to sanctions. All parties shall continue to  
2 maintain the material in question as confidential until the court rules on the challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
4 LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that compels  
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party  
7 must:

8 (a) promptly notify the designating party in writing and include a copy of the  
9 subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to  
11 issue in the other litigation that some or all of the material covered by the subpoena or order is  
12 subject to this agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued  
14 by the designating party whose confidential material may be affected.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
17 material to any person or in any circumstance not authorized under this agreement, the receiving  
18 party must immediately (a) notify in writing the designating party of the unauthorized  
19 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
20 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
21 this agreement, and (d) request that such person or persons execute the “Acknowledgment and  
22 Agreement to Be Bound” that is attached hereto as Exhibit A.



1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
 2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently  
 4 produced material is subject to a claim of privilege or other protection, the obligations of the  
 5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
 6 provision is not intended to modify whatever procedure may be established in an e-discovery  
 7 order or agreement that provides for production without prior privilege review. The parties agree  
 8 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON-TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving  
 11 party must return all confidential material to the producing party, including all copies, extracts  
 12 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
 13 destruction.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
 15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
 16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
 17 work product, even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a  
 19 designating party agrees otherwise in writing or a court orders otherwise.

20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21 s/Shannon McMinimee  
 22 Shannon McMinimee, WSBA #34471  
 23 Lara Hruska, WSBA #41612  
 24 Whitney Hill, WSBA #53715

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Counsel for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 11th day of August 2021.



The Honorable John C. Coughenour  
United States District Court Judge

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**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_  
[print or type full name], of \_\_\_\_\_  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
have read in its entirety and understand the Stipulated Protective Order that was issued by the  
United States District Court for the Western District of Washington on \_\_\_\_\_  
in the case of *E.K. et al v. Nooksack Valley School District et al*, 2:20-cv-01594-JCC.

I agree to comply with and to be bound by all the terms of this Stipulated Protective  
Order and I understand and acknowledge that failure to so comply could expose me to sanctions  
and punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
manner any information or item that is subject to this Stipulated Protective Order to any person  
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_